Filed 3/8/16 In re D.J. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re D.J., a Person Coming Under the Juvenile Court Law.	Case No. 144551
THE PEOPLE, Plaintiff and Respondent, v. D.J., Defendant and Appellant.	(Solano County Sup. Ct. No. J41559)

Welfare and Institutions Code section 241.1[1] requires the juvenile court to choose whether to proceed with the minor's case pursuant to section 602 (regarding delinquent behavior) or section 300 (regarding dependents needing protection) based on the minor's best interests and public safety when grounds appear to exist to proceed under either provision. D.J., a boy who is now 15 years old, appeals from the court's section 241.1 order to proceed with his case pursuant to section 602. He contends the court abused its discretion because there is not substantial evidence to support its decision, requiring reversal. We affirm the court's ruling.

[1] Our statutory references herein are to the Welfare and Institutions Code unless otherwise stated.

BACKGROUND

I.

The Initiation of Section 602 Proceedings

In July 2012, the Solano County District Attorney filed a juvenile wardship petition pursuant to section 602, subdivision (a) against D.J., then twelve years old, alleging that D.J. had committed felony second degree robbery. The police reported that D.J., his younger brother and another boy attacked a 13 year old, held him down and robbed him of his cell phone. D.J. did not appear in court as required, was arrested pursuant to a bench warrant and detained in juvenile hall. He appeared before the court in November 2012 and denied the robbery allegation.

The Solano County Probation Department (Department) reported to the court that D.J. had a prior referral for stealing a bicycle, which the Department had handled informally. He lived with his mother, stepfather, brother and a cousin and reported getting along well with them. He was in the seventh grade, having transferred to a new school earlier in the year after he had been suspended repeatedly for fighting at another. He had a behavioral individualized educational program (IEP), was receiving passing grades, and denied having any attendance issues, history of abuse or gang affiliations. Several years before, he had been diagnosed with attention deficit/hyperactivity disorder (ADHD), but he said he had not been prescribed medication. He also said he smoked marijuana daily.

D.J.'s mother told the Department that D.J. was first arrested when she was serving a 90-day jail sentence. In 2007, she was placed on probation for cocaine possession. D.J. did not appear for several court hearings because a then-active arrest warrant against mother deterred her from going to the court and other adult family members had transportation issues.

The court suspended proceedings pursuant to section 709 because of concerns about D.J.'s competency to stand trial. It ordered Dr. Janice Y. Nakagawa to assess his competency and D.J. placed at home subject to home supervision.

II.

Dr. Nakagawa's Psychological Assessment

After D.J. missed his first appointment, Dr. Nakagawa met with him and prepared an assessment in January 2013. She wrote that D.J. said he had run away the month before because he was " 'scared.' " He had difficulties comprehending what was taking place. He was cooperative, was easily distracted and had difficulties remaining in his chair and paying attention. "Notable social and emotional immaturity was evident" and his responses seemed "surprisingly simplistic and child-like." He had "extremely low" scores in vocabulary and social judgment subtests and did not know the meaning of words such as "thief," "leave" and "obey." He had "extremely low" academic and IQ scores and was "functionally illiterate."

D.J. knew he was charged with stealing an iPhone and eventually could explain that he was charged with robbery. However, he could not differentiate between a misdemeanor and a felony nor identify what pleas of guilty and not guilty meant, had forgotten his attorney's name, was not sure what "evidence" or "probation" meant and did not know what plea he would enter in the case. He thought he as a defendant was to " '[a]ct good and like be quiet and don't make no noise—and try to be still!' "

Dr. Nakagawa concluded that D.J.'s intellectual, developmental and academic deficits prevented him from consistently understanding the legal proceedings and assisting counsel in a rational way. She recommended that he be declared incompetent.

In February 2013, the court declared D.J. incompetent and suspended proceedings. It ordered the Probation Department to restore him to competency.

III.

The Amended Section 602 Petition

In April 2013, the district attorney filed an amended petition against D.J. that also charged him with brandishing a replica gun in a threatening way against a person in violation of Penal Code section 417.4, a misdemeanor. The Department reported that he had brandished the gun at a woman who confronted him about bullying her son. The police located D.J. and found a replica gun in his pants pocket. He denied pointing it at

the woman, but said he had pointed it at someone else. He was arrested and detained in juvenile hall.

D.J. denied the new allegations. The court gave the Department the discretion to release him to home supervision with electronic monitoring and kept its suspension of proceedings in place.

IV.

The April 2013 Probation Department Report and Hearing

In April 2013, the court ordered the Department to prepare a report on D.J.'s progress towards competency. The Department responded that Solano County did not have a program or method to restore juveniles such as D.J. to competency. An interagency committee recommended that D.J. contact Solano County Children's Mental Health (CMH) for a mental health/medication assessment and re-establish IEP services through his local school district.

The Department reported that mother had been told to contact CMH but did not, saying she was overwhelmed by D.J. being recently shot in the foot and by housing issues. She thought D.J. did not have mental health issues, could manage his behavior, and that "her lack of stability" contributed to his overall behavior. She would allow him to participate in counseling services if it helped him manage his behavior, but she would not allow him to take any psychiatric medication. Mother also missed an IEP meeting for D.J. She told the Department she was keeping her children out of Vallejo schools because they were not being treating fairly.

The court ordered that the proceedings remain suspended, an IEP be performed and there be follow-up on D.J.'s assessment and services.

V.

Dr. Van Gaasbeek's First Psychological Assessment

In July 2013, the court ordered Dr. Kyle Van Gaasbeek to assess D.J.'s competency to stand trial. Mother told the doctor they had been homeless for eight months and were staying with family and friends. She reported no other significant family stresses. She said

she did not allow D.J. to take medication for his ADHD. She indicated that she knew he smoked marijuana.

Dr. Gaasbeek found was D.J. pleasant and cooperative, had a limited vocabulary, did not know the answers to many questions and fidgeted throughout the assessment. Dr. Van Gaasbeek did not retest D.J.'s overall intellectual abilities, but did employ a test that provided "a brief measure of neuropsychological abilities." D.J.'s language score was higher than expected and he had a related strength in focused attention, but he had limits in his ability to learn and retain new information. His knowledge, and lack thereof, regarding the legal proceedings were similar to what he demonstrated to Dr. Nakagawa. Dr. Van Gaasbeek concluded that D.J. was engaging in behavior indicative of ADHD, socially immature, "clearly unable to understand the legal proceedings" and "unable to work with his attorney on his defense." Therefore, he was not competent to stand trial.

Based on Dr. Van Gaasbeek's assessment, the court ordered that the proceedings remain suspended.

VI.

CMH's Mental Health Assessment

In its October 4, 2013 memo to the court, the Department wrote that D.J. was diagnosed in a CMH mental health assessment with Oppositional Defiant Disorder, for which individual therapy was appropriate and medication was not necessary. CMH could not reach D.J.'s mother. A probation officer reported that mother had said she was working on enrolling D.J. in a Fairfield area school, but there was no indication that she did so. The court ordered that CMH try to bring D.J. to competency. The Department was ordered to assist with this process and in enrolling him in school.

In a December 2013 memo, the Department reported that mother said she could not enroll D.J. in a Fairfield area school for lack of proof of residency. The Department directed her to contact a school district official who could help, but she did not. The Department could not reach mother by phone despite many attempts and she had not contacted CMH since September 2013. It wrote that "[o]verall, there has been no progress made in the case."

VII.

The Section 329 Review

After D.J. failed to appear for hearings, he was arrested in January 2014 and detained in juvenile hall. The Department recommended that he stay there "[d]ue to [D.J.'s] mother's instability and lack of compliance with the Court orders to enroll [D.J.] in [CMH] and in school." It reported that in D.J.'s brother's case, the court recently held a section 241.1 hearing and, "[t]herefore, it appears 241.1 issues may exist in this case as well."[2]

At a January 16, 2014 hearing, D.J.'s counsel objected to D.J.'s detention, arguing he was really young, not at fault because his mother did not bring him to court, and should not remain in juvenile hall during the preparation of a section 241.1 report. His counsel also requested that instead of such a report, the court order a social worker to initiate an investigation pursuant to section 329.[3] The court agreed.

On January 30, 2014, Solano County Health and Social Services Department - Child Welfare Services (CWS) filed its section 329 report. It reported that D.J. "acknowledged that he missed his previous court hearings but did not appear to understand the ramifications of this action. [D.J.] minimized his criminal actions, admitted he was diagnosed with ADHD, but he refused to take medication or participate in counseling." He felt safe in his mother's care and wanted to be returned to it. Mother and the family were residing with a friend. Mother reported struggling for 13 months to obtain stable housing; she currently was applying for a home in Fairfield and hoped for an answer by the end of the month. Because

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[2] As we will discuss, section 241.1 requires that, when a minor appears to come within the description of both section 300 and section 602, the county probation and child welfare services departments, pursuant to a jointly developed written protocol, initially determine which status will serve the best interests of the minor and the protection of society. Their recommendations must be presented to the juvenile court, which determines which status is appropriate for the minor. (§ 241.1, subd. (a).)

[3] Section 329 provides in relevant part that "[w]henever any person applies to the social worker to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a child within the provisions of Section 300, and setting forth facts in support thereof. The social worker shall immediately investigate as he or she deems necessary to determine whether proceedings in the juvenile court should be commenced."

of this instability, mother said, D.J. was not attending school, for which she took responsibility. She said she was not told of any necessary mental health follow-up for D.J.

Mother also told the social worker that she might have undiagnosed mental health issues, such as "bi-polar or schizophrenia"; she had been a foster child and had never been taught how to parent; she would accept voluntary services to assist her in meeting D.J.'s mental health needs; and would submit herself to drug testing.

The social worker talked with mother's family members, who were concerned about her capacity to parent. They said she had abused substances in the past but they did not know of any current abuse. Mother said she smoked marijuana and drank occasionally, and had a medicinal cannabis card. She denied this usage impaired her parenting.

CWS concluded that "there is risk of future abuse or neglect of [D.J.], however there are no imminent safety concerns that would require the undersign[ed] to file a dependency action at this time." While the investigating social worker was "concerned about the mother's own mental health issues, her lack of follow through to address her son's mental health needs, housing instability, and possible substance use," "the concerns do not rise to the level of pursuing a 300 petition at this time." CWS agreed to provide voluntary services to mother.

At a January 30, 2014 hearing, D.J.'s counsel argued that D.J. was not at fault for his lack of participation in his assessment; rather, he had been willing to participate, but was too young to do so on his own. The court noted that it might not have been D.J.'s fault, but "nothing has been done to comply with my orders about dealing with [D.J.'s] mental health." It released D.J. to mother under CWS's voluntary family maintenance plan and ordered that CMH conduct an assessment of him. CWS indicated it would help D.J. enroll in school.

VIII.

Further Efforts to Bring D.J. to Competency

In an April 2014 memo, the Department reported mother had secured her own housing, D.J. was being assessed at CMH and he was attending school. Mother was open to engaging in further services. At the related hearing, the court commented that it sounded like things were improving. D.J.'s counsel did not disagree, but objected to the court's

continuance when D.J.'s young age was the basis for his incompetency; the court responded that it was also "some of his mental issues." It scheduled a September 2014 hearing to determine D.J.'s competency.

IX.

The Third Amended Section 602 Petition

In July 2014, the district attorney filed a third amended petition[4] with additional counts for felony possession of a firearm by a minor (Pen. Code, § 29610); misdemeanor possession of live ammunition (*id.*, § 29650); felony first degree residential burglary (*id.*, § 459), a serious felony (*id.*, § 1192.7, subd. (c)); and felony receiving stolen property (*id.*, § 496, subd. (a)). The police reported that D.J., his brother and another minor burgled a residence, after which police found D.J. and the minor with items from the residence and a loaded .45-caliber handgun in D.J.'s backpack. D.J. said he bought the gun for $600 to protect himself because he had been shot the previous year. He was detained in juvenile hall. The court ordered him to stay there, suspended proceedings on these new counts and ordered Dr. Van Gaasbeek to assess D.J.'s competency to stand trial on them.

X.

Dr. Van Gaasbeek's Second Psychological Assessment and Related Hearings

Dr. Van Gaasbeek again found D.J. incompetent to stand trial. He reported that since his last assessment, D.J. "had an unstable living situation. He lived with his mother and brother in a variety of places temporarily including motels and with various family members in Fairfield, Stockton, Vallejo, and Vacaville." Mother recently secured her own housing in Fairfield. She and D.J. had moved to a friend's home in Vallejo about two months before because D.J. " 'was getting jumped at the school.' " School records indicated his attendance in the past year was poor and D.J. reported he had missed four months out of the last academic year. Dr. Van Gaasbeek concluded from his testing and

[4] In April 2014, a second amended section 602 petition was filed charging D.J. with misdemeanor battery of a school worker. The Department's investigation indicated he had not tried to hurt anyone and the charge was dismissed.

interview of D.J. that there was "virtually no change in [D.J.'s] competency compared with what I noticed last year." He was not competent to stand trial.

At an August 2014 hearing, the court acknowledged Dr. Van Gaasbeek's assessment. The prosecutor requested a hearing on D.J.'s competency, while D.J.'s counsel asked for his release. The court denied D.J.'s request and ordered the Department to develop a competency plan.

At the September 2, 2014 hearing, Dr. Van Gaasbeek testified that D.J. had exhibited a "fairly limited" factual knowledge of legal proceedings. His incompetence was due to his intellectual functioning, ADHD and learning problems, and his Oppositional Defiant Disorder would add to his difficulties to become competent. However, he did not have a statutorily defined developmental disability. Dr. Van Gaasbeek thought D.J. was "maybe two-thirds competent" and thought he could become competent in "a few months" with "some type of competency training class and mental health treatment for his ADHD."

The court found Dr. Van Gaasbeek to be "a pretty good witness," but thought D.J. was 90 to 95 percent competent to stand trial. It concluded that D.J. "has barely proved by a preponderance of the evidence that he's not competent to stand trial" and ordered the proceedings suspended. It ordered the Department to develop a competency training program for his age group, have him seen by a psychiatrist for his ADHD and report to the court in two weeks.

D.J.'s counsel then asked that a report be prepared pursuant to section 241.1 and the court ordered it. The court again denied D.J.'s counsel's motion to dismiss the first two counts brought against him.

XI.

The Department's Report On Its Competency Plan

On September 16, 2014, the Department filed an addendum/memo about its competency plan It reported that Napa County did not have a competency training program for a juvenile such as D.J. The Department was obtaining the competency training protocol employed by Santa Clara County. D.J. was receiving limited mental health services while in juvenile hall, including a psychiatric evaluation for medication. The Department had

concerns about D.J.'s detention status in light of the suspended proceedings because it had no authority to pursue a placement for him. It reported that at a recent interagency meeting, CWS agreed to file a section 300 petition based on mother's lack of care and neglect, but that it changed its mind the next day because of D.J.'s alleged delinquent behavior.

At a hearing that same day, the court ordered a one-week continuance so that the different agencies could further develop a competency training plan for D.J. The court again denied D.J.'s counsel's motion for D.J.'s release because he was a potential danger to public safety, given the recent burglary and weapon allegations.

At a September 29, 2014 hearing, it was reported that agencies had developed a "restoration" plan for D.J. CMH was providing ongoing mental health treatment, the Department was ensuring he had an ADHD medication assessment, and the Solano County Office of Education (SCOE) was helping him understand the court process. The court again denied D.J.'s request that he be released.

XII.

The Court's Section 241.1 Decision

On October 7, 2014, the Department and CWS filed a "Disagreed Joint Assessment Report" (DJAR). CWS recommended D.J.'s case be handled pursuant to section 602 for lack of circumstances to support a section 300 petition against mother, to which the People agreed. The Department recommended that D.J.'s case be handled pursuant to section 300 because the dysfunction of his family was such a significant factor in his delinquency, to which D.J.'s counsel agreed. The court then held a contested section 241.1 hearing on November 3 and 4, 2014, at which several witnesses testified.

A. D.J.'s Witnesses

1. *Probation Services Manager Lisa Wamble*

Lisa Wamble, a probation services manager, testified that the Department was concerned D.J.'s mental health needs were not being met and that his mother could not provide for them. Wamble attended an interagency meeting at which CWS indicated it would file a section 300 petition because of such concerns, but later CWS changed its

mind. The agencies were addressing D.J.'s mental health needs while he was in custody, but he had "limited" therapy sessions.

2. *Probation Officer Andrea Valmore*

D.J.'s probation officer, Andrea Valmore, testified that D.J. was provided voluntary maintenance services until May 2014. His "residential instability" interfered with his ability to access services, since the family "moved from place to place so contacting his mother and [D.J.] was a bit difficult."

Valmore also said CWS had said at an interagency meeting that it would file a section 300 petition, but changed its mind the next day. She thought such a petition was in D.J.'s best interests given his family history, inability to get services, incompetence and the Department's related inability to place him.

3. *Kevin Kahn*

Kevin Kahn (who did not identify his work) testified that he attended an interagency meeting where CWS expressed concerns about the nature and complexity of D.J.'s issues, including being able to place him. Kahn understood the Department had concerns about being able to treat D.J. given his competency issues, the "pattern of family issues" interfering with his ability to get treatment and access services, and this pattern continuing "if [D.J.] remained in the care of his mother." He also thought there were more resources available in the section 300 system.

4. *Mental Health Physician Katherine Kellum*

Katherine Kellum, a mental health physician, testified that she worked with D.J. beginning in March 2014 as part of the voluntary services provided to him, had five individual therapy sessions with him to help him address his anger issues and closed the case in early June 2014. D.J. engaged in the sessions and was able to talk about his feelings; he was a little guarded, but worked through that and asked her things, such as to ask his mother to send him to school. Mother missed "a lot of appointments, cancelled appointments" and was a "no show," missing about three out of four sessions, even though most were scheduled at her home. In June 2014, mother and D.J. went missing after being evicted; mother later told Kellum D.J. was living in Stockton, she was

homeless and she could not make D.J. available. Kellum closed the case because D.J. lived outside the county.

B. CWS's Witnesses

1. *CWS Supervisor Erica Mitchell*

Erica Mitchell, a CWS social services supervisor, testified that she attended an interagency meeting about D.J. and told the group that CWS was willing to file a section 300 petition, but only if the court ordered that D.J. be in protective custody and remain at juvenile hall while CWS sought to place him, and that the Department could reinstate the section 602 charges against him if he became competent to stand trial.

2. *CWS Social Worker Carl Fuller*

Carl Fuller, a CWS social worker who worked with mother and D.J. on their voluntary maintenance services, also testified. He initially met mother in February 2014, when she signed a voluntary services agreement and agreed to meet with Fuller weekly. Their case plans called for D.J. and mother to each address their mental health needs, for mother to address her substance abuse needs and parenting, and for D.J. to attend school regularly. Fuller met with D.J. about four times, but mother missed about half their appointments. He was not able to go over the case plan with her because it was "very difficult to try to meet with the mother. She would scream at me and yell at me, tell me to leave her home. She would repeatedly cuss at me over the phone, then vent a lot of frustration." In late February, she was "irate" at D.J.'s brother and, when Fuller visited the home unannounced, she was "very irate and angry, [and used] a lot of profanity." Fuller thought she seemed "very erratic" and he was concerned about her mental health. Mother did not follow up on a mental health referral.

Fuller also asked mother to drug test. Although she said she would, she did not. During a home visit, mother's boyfriend offered to go out and buy alcohol for her because she was under stress, while on another occasion, mother, agitated, began drinking a beer, but then poured it down the sink.

Fuller was not able to engage with D.J., who did not appear to trust child protective services. D.J. attended 16 of 30 school days during the time Fuller was

supervising his case plan. Fuller thought D.J. was "very comfortable with his mother's presence."

Fuller closed the case in May 2014 after mother said she was not interested in services. He did not file a section 300 petition because he did not see any child welfare issues that warranted one; he had been told the family had moved to Vallejo or Stockton and had no knowledge where they had gone.

Fuller still did not believe there were enough issues to file a section 300 petition at the time of the hearing because "the things that [D.J.] is doing are delinquent in nature," which was "more for Probation to address." Fuller thought mother loved D.J., had provided for his needs, food and shelter, and made efforts to keep him in school and in mental health services.

3. *CWS Social Worker Amy Furlong*

Amy Furlong, a CWS social worker, testified that she conducted an investigation as part of the preparation of the section 241.1 report. In doing so, she had several phone conversations with mother and met with D.J. twice.

Furlong discussed with D.J. his relationship with his mother, why he was in juvenile hall, some of his educational background and "school stuff." She did not discuss mother's substance abuse issues. D.J. was "very clear his mother and he have never been homeless," as she had always found housing. D.J. told her the specific charges against him, why he was in juvenile court and his thoughts about why he was caught. He understood his lawyer's job was to get him out of the hall.

Mother denied any current substance use except for medicine. Furlong reviewed mother's prior referrals, but all were either unfounded or "evaluated out," meaning the referral "was not investigated at all." Furlong had participated in a section 241.1 investigation regarding D.J.'s brother and, in doing so, learned there were "complicating factors" with the family and issues mother could be addressing, but they did not create abuse or safety issues. Mother said D.J. was the first child she had had since she was sober and that she was trying to do a good job with him "because she feels a little guilty about her previous kids."

Furlong did not find any current safety risks for D.J. that concerned her and did not think there was a basis for a section 300 petition. Mother was "doing the best she can with what she [had]" and, although her family was marginal, CWS had "a lot of marginal families we don't intervene in on." When the court asked her how this case was different from a section 300 case in which a parent allowed their child to get drugs, Furlong said, "[W]hen you're talking about a three year old toddling around the house, getting their hands on the parent's methamphetamine is a lot different supervisory issue than a 14 year old who is making decisions and a mom who historically has attempted to keep him corralled . . . ." Although she did not do placements, Furlong was also concerned that D.J.'s "criminal priors and consistent behavior for the last three years" would make it difficult for CWS to find a placement for him, especially with an IEP that complicated things.

On cross-examination, Furlong acknowledged that she never met with mother, that she did not know D.J.'s school attendance record, and that mother said that she "babied" D.J., could be contributing to his behaviors and lack of development, and had a lifestyle instability that could have contributed to D.J.'s circumstances.

C. The Court's Section 241.1 Decision

After hearing closing argument, the court observed that D.J. did not "fit easily" in either the section 300 or section 602 system, "so nobody wants to touch the case." It acknowledged it had to make a decision based on allegations rather than adjudicated facts, and then continued, "Basically right now what I do know is that as we sit here today social services is saying they don't have enough facts to sustain a petition under 300. More importantly in my mind, because I'm not sure I completely buy that, I haven't been told of a place where he could be placed. I have been told it would be difficult if he was to have a petition sustained under a 300 and detained, that there would be a place that could treat him and his needs suitably, that apparently a lot of the group homes they have, I heard in the testimony here, wouldn't be necessarily willing to take him given the problems he's been having. I'm not sure I buy that either, but that's what I heard. The flip side of that is under probation I do know that he's been charged [with] at least three

fairly serious crimes, so far he's been found not competent to stand trial. [¶] But I also heard during the 709 hearing that according to the psychologist that with some therapy he's close to being competent to stand trial, so at this state of the game seems to me in looking at 241.1(b)(2) and the factors I have to consider there,[5] balancing out the problems at home, problems with his parents, problems at school, his arguable criminal activity in the past, all the other sort of factors, that right now he's best suited in the 602 system." The court said this decision could be revisited if circumstances changed. It also ordered reports on D.J.'s competency progress and whether he needed to be medicated, and rejected another motion by D.J.'s counsel for his release to his mother's custody.

XIII.

Dr. Shields's Psychological Assessment and the Court's Competency Ruling

In a November 19, 2014 memo to the court, the Department reported that D.J. had completed the last chapter of a competency training workbook and had a "great session" with the person reviewing the workbook with him. He then refused to continue his participation, saying " 'I already know it all . . . I'm not stupid.' " A SCOE school psychologist reported that D.J.'s " 'triennial review and results are consistent with previous assessment findings.' " A CWS staffer reported meeting with D.J. weekly and that he remained guarded. In light of these events, the Department recommended another competency evaluation. The court

[5] Section 241.1, subdivision (b)(2) states that when a minor appears to come within both section 300 and section 602, the protocol to determine the minor's status that is developed jointly by the county probation and child welfare services departments "shall require, but not be limited to, consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies that have been involved with the minor and his or her family. The protocols also shall contain provisions for resolution of disagreements between the probation and child welfare services departments regarding the need for dependency or ward status and provisions for determining the circumstances under which filing a new petition is required to change the minor's status."

subsequently ordered that Dr. John Shields perform this assessment. It also denied another motion by D.J.'s counsel to have the case dismissed.

On December 19, 2014, Dr. Shields filed an extensive, 16-page assessment of D.J.'s competency. He reported that the previous psychological assessments by Doctors Nakagawa and Van Gaasbeek did not use assessment tools for evaluating *juvenile* competence, but instead used tools "originally designed for adults or for research." Dr. Shields's data "found, like previous evaluations, that [D.J.] demonstrates significant intellectual and academic deficits." Nonetheless, "assessment of [D.J.'s] adjudicative competence related abilities finds that he does demonstrate an adequate understanding of the nature of juvenile court proceedings." "Also, despite some significant cognitive deficits, he is able to converse adequately about his pending case, and can cooperate with and assist his legal counsel if he chooses to do so. Based on the data collected during the present evaluation, it is this evaluator's opinion that [D.J.] is presently **competent** to proceed with trial in juvenile court."

On December 19, the court received Dr. Shields's evaluation, found D.J. was competent to stand trial and recommenced the delinquency proceedings.

XIV.

The Adjudication of the Section 602 Petition

On January 6, 2015, D.J. executed a written waiver of rights and entered a change of plea pursuant to a negotiated disposition of his case. He admitted the allegations in counts 4 (illegal possession of a concealed weapon) and 6 (burglary), the court found that D.J. was competent to enter a plea, and the remaining counts were dismissed "with comment," meaning D.J. remained liable for any money owed.

At disposition, the court set the period of confinement at the maximum of six years, eight months, deemed counts 4 and 6 to be felonies and granted probation. D.J. was committed to juvenile hall for 201 days with credit for 201 days served, and ordered to remain there until placed in a suitable foster home.

In February 2015, the Department reported that it was attempting to place D.J. in a high level mental health group home. In April 2015, D.J. was placed in a group home in Fresno, California.

On March 10, 2015, D.J.'s counsel filed a notice of appeal on D.J.'s behalf from numerous of the court's orders.

DISCUSSION

D.J. argues that the juvenile court erred when it decided pursuant to section 241.1 and upon its review of the October 2014 DJAR and related evidence to consider D.J. as a potential juvenile ward pursuant to section 602 rather than a potential dependent pursuant to section 300. Specifically, D.J. argues that (1) under the applicable law, the facts supported the commencement of a section 300 dependency action to protect D.J., and (2) the court's decision to proceed under section 602 was not supported by substantial evidence and constituted an abuse of discretion. We disagree.

I.

Statutory Framework and Standard of Review

The statutory framework and standard of review that we apply here is outlined in *In re M.V.* (2014) 225 Cal.App.4th 1495: "A child who has been abused or neglected falls within the juvenile court's protective jurisdiction under section 300 as a 'dependent' child of the court. In contrast, a juvenile court may take jurisdiction over a minor as a 'ward' of the court under section 602 when the child engages in criminal behavior. [Citations.] As a general rule, a child who qualifies as both a dependent and a ward of the juvenile court cannot be both. (§ 241.1, subd. (d); [citation].) Instead, section 241.1 sets forth the procedure that the juvenile court must follow when faced with a case in which it may have dual bases for jurisdiction over a minor.

"Pursuant to section 241.1, whenever it appears that a minor may fit the criteria for both dependency and wardship, 'the county probation department and the child welfare services department shall . . . initially determine which status will serve the best interests of the minor and the protection of society.' The assessment of a minor under section 241.1 is statutorily required to include, at a minimum, consideration of the following eight factors: (1) the nature of the referral; (2) the age of the minor; (3) the prior record of the minor's parents for child abuse; (4) the prior record of the minor for out-of-control or delinquent behavior; (5) the parents' cooperation with the minor's

school; (6) the minor's functioning at school; (7) the nature of the minor's home environment; and (8) the records of other agencies that have been involved with the minor and his or her family. (§ 241.1, subd. (b)(2).) This statutory mandate has been augmented by rule 5.512, which requires the joint assessment under section 241.1 to be memorialized in a written report. Further—in addition to the eight factors set forth in section 241.1 that must be considered in any such joint assessment—[California Rules of Court,] rule 5.512 demands evaluation of four additional items: (1) the history of any physical, sexual, or emotional abuse of the child; (2) any services or community agencies available to assist the child and his or her family; (3) a statement by any counsel currently representing the minor; and (4) a statement by any court appointed special advocate (CASA) currently appointed for the child. (Rule 5.512(d).) Once the recommendations of both departments are presented to the juvenile court, it remains for the court to 'determine which status is appropriate for the minor.' (§ 241.1, subd. (a); see rule 5.512 (g) [court must make a determination regarding the appropriate status of the minor and state its reasons on the record or in a written order].)

"We review the juvenile court's determination under section 241.1 for abuse of discretion. [Citation.] 'To show abuse of discretion, the appellant must demonstrate the juvenile court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice.' (*Ibid*.) Throughout our analysis, we will not lightly substitute our decision for that rendered by the juvenile court. Rather, we must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings where there is substantial evidence to support them." (*In re M.V.*, *supra*, 225 Cal.App.4th at pp. 1505–1507, fn. omitted.)

II.

The Juvenile Court Did Not Abuse Its Discretion In Making Its Section 241.1 Ruling.

A. D.J.'s Section 300 Arguments Are Unpersuasive.

D.J. first engages in an extensive rehashing of the circumstances of his case and presents scattershot legal arguments in an effort to show the court should have treated him as a potential section 300 dependent because of his mother's neglect. These

contentions and arguments are unpersuasive. Some have been forfeited by D.J.'s failure to first raise them below; in any event, they ask us to reweigh the evidence in disregard of our obligation to review the record for substantial evidence in support of the court's decision to consider D.J.'s case pursuant to section 602.

1. *D.J. Has Forfeited His Inadequate DJAR Arguments.*

D.J. first makes a series of arguments about the inadequacy of the DJAR. He has forfeited these arguments by failing to first raise them below.

Specifically, D.J. contends that the DJAR was based on an insufficient investigation of what was statutorily required, since Furlong's investigation into the "nature of the minor's home environment" (§ 241.1, subd. (b)(2)) amounted to telephone calls to mother and nothing more. CWS purportedly failed to acknowledge that mother once admitted the difficulties with living in a motel and once reported that D.J. said he did not want to live with her anymore, and that mother's "living circumstances were contributing facts to [D.J.'s] behavioral problems." D.J. concludes that the failure of the DJAR to fully evaluate "the very problematic nature of [D.J.'s] home life . . . causes concern that this issue was never adequately addressed, thus undermining the reliability of the court's ruling."[6]

D.J. also argues that the DJAR and hearing testimony insufficiently reviewed "the parents' cooperation with the minor's school" and "the minor's functioning at school," although this review was also statutorily required. (§ 241.1, subd. (b)(2).) He contends that no one addressed "the difficult problem of [D.J.'s] extraordinary absence from school and what could be done to correct it," nor did the DJAR offer "a plan to establish or improve mother's involvement with her son's school."

As the People point out, D.J. has forfeited these arguments. As indicated by *In re M.V.*, *supra*, 225 Cal.App.4th 1495, when a party never complained below about the adequacy of a section 241.1 report, such as the one prepared here, he has forfeited his

[6] D.J. also contends, without pursuing it further, that CWS's earlier section 329 report left out important facts about the family's functioning and conditions.

claims that the report was inadequate. (*Id*. at pp. 1508, 1510–1511.)[7] In any event, the court demonstrated during the proceedings that it was familiar with the well-developed record regarding D.J.'s family circumstances, unstable living conditions and problems with school. (See *id*. at p. 1511 [noting that " '[w]hen a parent challenges an assessment report as inadequate, the reviewing court evaluates any deficiencies in the report in view of the totality of the evidence in the appellate record,' " and concluding that any report deficiencies were harmless because the "vast majority of evidence" supposedly lacking in the report "was before the court from other sources"].)

2. *D.J.'s Section 300 Arguments Are Beside the Point.*

Next, D.J. makes a series of contentions and arguments to persuade this court that his case merited a section 300 petition. For example, D.J. contends the court ignored that because of his mother, he missed numerous court and mental health appointments, was not allowed to take medication for his ADHD and lived in unstable situations for years that interfered with his school attendance. He contends "it was mother's pattern of

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[7] However, we reject the People's contention that D.J.'s entire claim should be "deemed waived." The People point out that the juvenile court stated in announcing its decision that section 241.1. rulings "by their very nature . . . are made without prejudice because situations can change" and told D.J.'s counsel to "[b]ear that in mind," and the People fault D.J. for not asking to proceed under section 300 later in the proceedings. The People provide no legal support for this waiver argument and in any event, the case quickly resolved via a negotiated disposition after the court's section 241.1 ruling. We see no reason to fault D.J. under these circumstances.

To counter the suggestion in D.J.'s papers that the court could have ordered a section 241.1 report sooner, the People also argue that the juvenile court is not required to file a section 241.1 report until two petitions, one alleging section 300 jurisdiction and the other alleging section 601 or 602 jurisdiction, are filed. D.J. disagrees with this contention. We need not decide this issue because D.J. does not contend the court committed reversible error by not ordering a section 241.1 report sooner (a claim he could hardly maintain in light of his own counsel's request in early 2014 that the court order a section 329 report rather than a section 241.1 report) and the People's concession that a juvenile court *can* conduct a section 241.1 inquiry on the request of the child, among others, which is what occurred here. (See Cal. Rules of Court, rule 5.512(a)(4) ["If a petition has been filed, on the request of the child . . . , the court may set a hearing for a determination under section 241.1 and order that the joint assessment report be made available . . ."].)

promising compliance and not following through that had contributed to [his] delinquency" and points to the DJAR statement that CWS terminated its voluntary services "due to the mother's lack of follow through and participation."

D.J. also emphasizes his mother's history of referrals dating back to 2003, including for purported general and severe neglect, emotional and physical abuse and caretaker absence (although he acknowledges all were found to be either unfounded or evaluated out). He points out that mother thought she had mental health problems, had a past history of substance abuse and acted in ways that raised questions about her sobriety, knew that D.J. was smoking marijuana daily, and was a concern of family members regarding her parenting abilities. He questions CWS's view in the DJAR that mother had a stable residence when she was sleeping at a friend's residence and planned only to move to a Fairfield motel. Also, D.J. asserts, "[n]othing in mother's housing history after May 2013 would reasonably inspire" that things would ever improve. He also reviews the testimony at the section 241.1 hearing that favors his position. He emphasizes CWS social worker Fuller's testimony about his own difficulties with mother, concerns about mother's mental health and observations on home visits that raised questions about mother's present sobriety.

D.J. also points to the evidence that at an interagency meeting, CWS at first believed that a sustainable section 300 petition could be filed, but then changed its mind, a reversal that D.J. contends was "without merit." He acknowledges that CWS was of the view that "mother was . . . doing the best she could, in effect not sufficiently blameworthy," but he questions "whether parental blameworthiness is even required to uphold section 300 [,subdivision] (b) jurisdiction," an issue now before the California Supreme Court. (See *In re R.T.* (2015) 235 Cal.App.4th 795, review granted in *In re R.T.* (2015) 188 Cal.Rptr.3d 373 [stating that the issue to be briefed and argued is whether section 300, subdivision (b)(1) "authorize[s] dependency jurisdiction without a finding that parental fault or neglect is responsible for the failure or inability to supervise or protect the child"].)

D.J. also argues that his case history is direct evidence of, at least, his mother's failure to supervise him, and that her failure to do so was a violation of Penal Code section 272.[8]

Finally, D.J. cites cases which discuss section 300 in support of his contention that a dependency action should have been brought based on "the facts . . . show[ing] mother had a drug history and continued to use (at least) marijuana and alcohol, and she knew [D.J.] was consuming marijuana." (See, e.g., *In re M.V.*, *supra*, 225 Cal.App.4th 1495 [indicating in affirming a decision to consider a 15-year-old minor pursuant to section 602 that a section 300 petition could have been instituted where the parent and minor were using marijuana daily and the minor had been arrested on marijuana and prostitution charges]; *K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1394 [mother failed to adequately care for children because of a crippling addiction to nicotine]; *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1320–1321 [mother's mental illness and delusions posed a risk of serious emotional harm to her son]; *In re I.G.* (2014) 226 Cal.App.4th 380, 383 [reversing termination of dependency jurisdiction for 14 year old who had been detained from mother's custody because of mother's substance abuse and failure to supervise her].)

We need not review D.J.'s section 300 arguments in any detail because they are beside the point. We are not the court of first instance making findings of fact. We need not be persuaded that D.J.'s circumstances merited a section 300 petition. Section 241.1 presumes that the circumstances for the minor in question at the very least "appear" to qualify him or her for such a petition. (§ 241.1, subd. (a).) Again, *In re M.V.* explains:

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[8] Penal Code section 272 subjects to misdemeanor penalties any person "who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of . . . [section] 602." (Pen. Code, § 272, subd. (a).) It provides that, "[f]or purposes of this subdivision, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child." (*Id.*, § 272, subd. (b); see *Williams v. Garcetti* (1993) 5 Cal.4th 561, 571 [discussing parent liability under Penal Code section 272].)

"As a general rule, a child *who qualifies as both a dependent and a ward* of the juvenile court cannot be both. (§ 241.1, subd. (d); [citation].) Instead, section 241.1 sets forth the procedure that the juvenile court must follow when faced with a case *in which it may have dual bases* for jurisdiction over a minor." (*In re M.V., supra*, 225 Cal.App.4th at pp. 1505–1506, italics added).) Thus, D.J.'s contentions that he qualified for a section 300 petition, assuming for the sake of argument that he is correct, do little for his appeal; they would only be relevant if he were arguing that his case could *only* be treated pursuant to section 300. He does not and cannot do so in light of his repeated delinquent behavior, as well as the risk to public safety that his behavior posed, which the court was statutorily required to consider pursuant to section 241.1. Certainly, the court was entitled to consider that a case involving a 14 year old allegedly in possession of a loaded firearm, who allegedly had burgled a residence and who had a history of violence should proceed pursuant to section 602.

Furthermore, D.J. all but ignores that Furlong, who helped prepare the section 241.1 report on behalf of CWS, the agency that would be responsible for him if the case proceeded pursuant to section 300, was concerned that CWS would have difficulty placing him as a dependent in light of his delinquent behavior and history. The court was entitled to rely on this concern, and did, in stating its decision. D.J.'s failure to show that this should not have been of concern is also fatal to any argument that his case *had* to proceed pursuant to section 300.

B. Substantial Evidence Supports the Juvenile Court's Ruling.

In a scant two-and-a-half pages at the end of his opening brief, D.J. finally argues the most relevant issue of his appeal: whether the juvenile court's ruling that the case proceed pursuant to section 602 is supported by substantial evidence. However, he fails to address the substantial evidence that supports the court's ruling.

As D.J. correctly points out, " '[s]ubstantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value. [Citations.] 'Substantial evidence . . . is not synonymous with "any" evidence.' Instead, it is

‘ “ ‘substantial’ proof of the essentials which the law requires.” ’ [Citations.] The focus is on the quality, rather than the quantity, of the evidence. ‘Very little solid evidence may be “substantial,” while a lot of extremely weak evidence might be “insubstantial.” ’ [Citation.] Inferences may constitute substantial evidence, but they must be the product of logic and reason. Speculation or conjecture alone is not substantial evidence. [Citations.] Expert opinion testimony constitutes substantial evidence only if based on conclusions or assumptions supported by evidence in the record. Opinion testimony which is conjectural or speculative ‘cannot rise to the dignity of substantial evidence.’ ” (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

D.J.’s “substantial evidence” argument continues his rehashing of the circumstances of his case in an effort to relitigate the matter. He contends that the Department’s position that his case should be treated pursuant to section 300 “was essentially a concession that it had not been able to provide the necessary complex of services and care necessary to protect [D.J.] from the continuing neglect he faced and the worsening behavior, and it determined that the causes of [D.J.’s] behavioral problems lay with his home life and unattended mental issues. The Department was correct in its assessment. [CWS] countered that mother’s failures, as detrimental as they might be, did not support the filing of a section 300 petition. CWS was wrong on the facts and the law.” He continues that “it was the court’s duty to protect [D.J.] and public safety. There was no evidence that both goals could not be achieved in a dependency action. . . . [¶] . . . [T]he recommendation of the Department, the evidence regarding [D.J.] and his mother, and the applicable law established that a dependency action was the option that achieved section 241.1’s stated intention of determining which agency ‘will serve the best interests of the minor and the protection of society.’ [§ 241.1, subd. (a).] For the above stated reasons, the court’s ruling was not based on substantial evidence and constituted an abuse of discretion.”

D.J.’s argument merely asserts again why the juvenile court would have been justified to proceed with a section 300 action. Again, that is not the pertinent question before us. He fails to take on the essential task of his appeal by not explaining why the

juvenile court's decision to handle the case pursuant to section 602 was not supported by substantial evidence. Clearly it was, because of the evidence of D.J.'s delinquent behavior, which included allegations that he had bought and possessed a loaded gun and committed a residential burglary and evidence that supported these allegations, his previous incidents of alleged threats and violence, his running away and his sometime refusal to participate in mental health services. All of this evidence demonstrated that he would be difficult to manage as a dependent and posed a serious threat to public safety. Furthermore, none of the parties disagreed with a major concern of the court in treating him as a potential section 602 ward, which was the difficulty CWS would have in placing him at all within its dependency system. Conversely, there was substantial evidence, as indicated by the services provided to D.J. once he was detained in juvenile hall in the last half of 2014, that the Department was capable of providing services to D.J. that he needed.

In light of our conclusions, we do not have any need to address the other issues raised by the parties.

DISPOSITION

The court's section 241.1 order is affirmed, as are the remainder of the court's orders identified in D.J.'s notice of appeal, for which D.J. has presented no argument.[9]

[9] D.J.'s notice of appeal states that he is appealing from the following findings and orders of the court: "08/20/14; 09/02/14; 09/16/14; 09/22/14; 11/03/14; 11/04/14; 12/2/14; 1/5/15; 1/6/15; 01/21/15; 01/27/15; 02/25/15; 03/0915. Minor's appellate rights were never waived and read to the minor by court on 1/30/15."

STEWART, J.

We concur.

KLINE, P.J.

MILLER, J.